

Express Mail No. EV531715071US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT APPLICATION

Applicants:	Max Aebi et al.	Confirmation No.:	7507
Application No.:	10/538,950		
Int'l Appln. No.:	PCT/CH02/00707	I.A. Filing Date:	December 17, 2002
For:	INTERVERTEBRAL IMPLANT	Attorney Docket:	8932-1182-999 (new) (formerly LUS-16100)

New York, New York 10017
March 1, 2007

Mail Stop PCT
Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attention: Office of PCT Legal Administration

REPLY TO DECISION ON PETITION

Sir:

Applicants hereby reply to the Decision On Petition mailed February 12, 2007
(copy enclosed) in connection with this case.

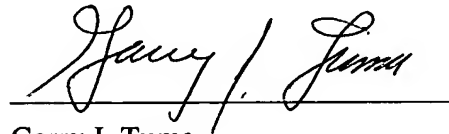
The Decision indicated that the previously filed declaration by co-inventors
Dominique Burkard, Robert Frigg, and Beat Lechmann was defective and insufficient to satisfy
the oath or declaration requirement of 35 C.F.R. § 371(c)(4) for entry into U.S. national stage.

Applicants accordingly submit herewith a partially-executed Declaration And Power Of Attorney executed by co-inventors Dominique Burkard, Robert Frigg, and Beat Lechmann.

Applicants respectfully request continued national stage processing of this application and issuance of a Notice Of Acceptance Of Application.

This Reply is being filed within two months of the February 12, 2007 mail date of the Decision and, thus, no fee is believed due. However, if for any reason a fee is due in connection with this Reply, please charge that fee to Deposit Account No. 50-3013. A duplicate copy of this Reply is enclosed.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Garry J. Tuma", is written over a horizontal line.

Garry J. Tuma
Registration No. 40,210
Attorney for Applicants

JONES DAY
Customer No. 51832
222 East 41st Street
New York, New York 10017
(212) 326-3939

COPY



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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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12 FEB 2007

Re: *Reconsideration*
Sub. 4/12/07 (4521.99.1)

Turnover doc

FEB 14 2007

89-1182-999

Jones Day
222 East 41st Street
New York, New York 10017

In re Application of
AEBI et al.
Application No.: 10/538,950
PCT No.: PCT/CH02/000707
Int. Filing: 17 December 2002
Priority Date: None
Attorney Docket No.: LUS-16100
For: INTERVERTEBRAL IMPLANT

DECISION ON PETITION

This decision is in response to applicants' "Reply to Decision on Petition under 1.47(a)" filed 25 January 2007. In a decision dated 29 November 2006, applicants' petition under 37 CFR 1.47(a) to accept the application without the signature of inventor, Max Aebi, was dismissed without prejudice.

The petition for status under 37 CFR 1.47(a) is moot since the declaration filed 25 January 2007 with the present renewed petition was executed by the named inventor, the previous nonsigning inventor, Max Aebi. The declaration filed 25 January 2007 is acceptable under 37 CFR 1.497(a)-(b).

However, as stated in the previous Decision on Petition dated 29 November 2006, the declaration filed on 19 September 2006, executed by Dominique Burkard; Robert Frigg; and Beat Lechman, is defective and is insufficient to satisfy the oath or declaration requirement of 35 CFR 371(c)(4) for entry into the national stage in the United States of America. Specifically, the declaration included non-translated foreign language text handwritten thereon. (See 37 CFR 1.69) Therefore, a newly executed declaration by Dominique Burkard, Robert Frigg, and Beat Lechman is required.

CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.47(a) is **DISMISSED** as **MOOT**.

A proper response must be filed within **TWO (2) MONTH** from the mail date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a). A proper response must include a newly executed declaration (by Dominique Burkard; Robert Frigg; and Beat Lechman) in compliance with 37 CFR 1.497(a)-(b).

Application No.: 10/538,950

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Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Anthony Smith
Attorney-Advisor
Office PCT Legal Administration
Tel.: 571-272-3298
Facsimile: 571-273-0459

DECLARATION AND POWER OF ATTORNEY

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below at 201 et seq. beneath my name.

I believe I am the original, first and sole inventor if only one name is listed at 201 below, or an original, first and joint inventor if plural names are listed at 201 et seq. below, of the subject matter which is claimed and for which a patent is sought on the invention entitled

INTERVERTEBRAL IMPLANT

and for which a patent application:

☒ was filed in the United States on June 14, 2005 as Application No. 10/538,950 and amended on even date, said application being a National Stage of:

☒ PCT International Application No. PCT/CH02/000707, filed on December 17, 2002

I hereby state that I have reviewed and understand the contents of the above identified application, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, §119(a)-(d) of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

EARLIEST FOREIGN APPLICATION(S), IF ANY, FILED PRIOR TO THE FILING DATE OF THE APPLICATION				
APPLICATION NUMBER	COUNTRY	DATE OF FILING (day, month, year)	PRIORITY CLAIMED	
			YES <input type="checkbox"/>	NO <input type="checkbox"/>
			YES <input type="checkbox"/>	NO <input type="checkbox"/>

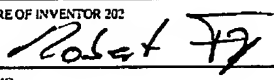

I hereby claim the benefit under Title 35, United States Code, §119(e) of any United States provisional application(s) listed below.

PROVISIONAL APPLICATION NUMBER	FILING DATE

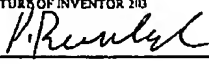
I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code §112, I acknowledge the duty to disclose information known to me which is material to patentability as defined in Title 37, Code of Federal Regulations, §1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application:

NON-PROVISIONAL APPLICATION NO.	FILING DATE	STATUS		
		PATENTED	PENDING	ABANDONED

POWER OF ATTORNEY: As a named inventor, I hereby appoint the Practitioners of Customer Number 51832, whose address is Jones Day, 222 East 41st Street, New York, New York 10017, my attorneys, to prosecute this application, and to transact all business in the Patent and Trademark Office connected therewith.

SEND CORRESPONDENCE TO:		JONES DAY 222 East 41st Street, New York, NY 10017 PTO Customer No. 51832		DIRECT TELEPHONE CALLS TO: JONES DAY DOCKETING 212-901-9028	
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.					
2 0 1	FULL NAME OF INVENTOR	LAST NAME Aebi	FIRST NAME Max	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY Bern	STATE OR FOREIGN COUNTRY Switzerland	COUNTRY OF CITIZENSHIP Switzerland	
	POST OFFICE ADDRESS	STREET Gerechtigkeitsgasse 48	CITY Bern	STATE OR COUNTRY Switzerland	ZIP CODE CH-3011
	SIGNATURE OF INVENTOR 201			DATE	
2 0 2	FULL NAME OF INVENTOR	LAST NAME Frigg	FIRST NAME Robert	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY Bettlach	STATE OR FOREIGN COUNTRY Switzerland	COUNTRY OF CITIZENSHIP Switzerland	
	POST OFFICE ADDRESS	STREET Mattenweg 8	CITY Bettlach	STATE OR COUNTRY Switzerland	ZIP CODE CH-2544
	SIGNATURE OF INVENTOR 202 			DATE 2/19/07	
2 0 3	FULL NAME OF INVENTOR	LAST NAME Burkard	FIRST NAME Dominique	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY Gretzenbach	STATE OR FOREIGN COUNTRY Switzerland	COUNTRY OF CITIZENSHIP Switzerland	
	POST OFFICE ADDRESS	STREET Hasengasse 6	CITY Gretzenbach	STATE OR COUNTRY Switzerland	ZIP CODE CH-5014
	SIGNATURE OF INVENTOR 203			DATE	
2 0 4	FULL NAME OF INVENTOR	LAST NAME Lechmann	FIRST NAME Beat	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY Bettlach	STATE OR FOREIGN COUNTRY Switzerland	COUNTRY OF CITIZENSHIP Switzerland	
	POST OFFICE ADDRESS	STREET Grenchenstrasse 29a	CITY Bettlach	STATE OR COUNTRY Switzerland	ZIP CODE CH-2544
	SIGNATURE OF INVENTOR 204 			DATE 2/27/2007	

POWER OF ATTORNEY: As a named inventor, I hereby appoint the Practitioners of Customer Number 51832, whose address is Jones Day, 222 East 41st Street, New York, New York 10017, my attorneys, to prosecute this application, and to transact all business in the Patent and Trademark Office connected therewith.

SEND CORRESPONDENCE TO:		JONES DAY 222 East 41st Street, New York, NY 10017 PTO Customer No. 51832		DIRECT TELEPHONE CALLS TO: JONES DAY DOCKETING 212-901-9028	
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.					
2 0 1	FULL NAME OF INVENTOR	LAST NAME Aebi	FIRST NAME Max	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY Bern	STATE OR FOREIGN COUNTRY Switzerland	COUNTRY OF CITIZENSHIP Switzerland	
	POST OFFICE ADDRESS	STREET Gerechtigkeitsgasse 48	CITY Bern	STATE OR COUNTRY Switzerland	ZIP CODE CH-3011
	SIGNATURE OF INVENTOR 201			DATE	
2 0 2	FULL NAME OF INVENTOR	LAST NAME Frigg	FIRST NAME Robert	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY Bettlach	STATE OR FOREIGN COUNTRY Switzerland	COUNTRY OF CITIZENSHIP Switzerland	
	POST OFFICE ADDRESS	STREET Mattenweg 8	CITY Bettlach	STATE OR COUNTRY Switzerland	ZIP CODE CH-2544
	SIGNATURE OF INVENTOR 202			DATE	
2 0 3	FULL NAME OF INVENTOR	LAST NAME Burkard	FIRST NAME Dominique	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY Gretzenbach	STATE OR FOREIGN COUNTRY Switzerland	COUNTRY OF CITIZENSHIP Switzerland	
	POST OFFICE ADDRESS	STREET Hasengasse 6	CITY Gretzenbach	STATE OR COUNTRY Switzerland	ZIP CODE CH-5014
	SIGNATURE OF INVENTOR 203 			DATE 2007-02-26	
2 0 4	FULL NAME OF INVENTOR	LAST NAME Lechmann	FIRST NAME Beat	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY Bettlach	STATE OR FOREIGN COUNTRY Switzerland	COUNTRY OF CITIZENSHIP Switzerland	
	POST OFFICE ADDRESS	STREET Grenchenstrasse 29a	CITY Bettlach	STATE OR COUNTRY Switzerland	ZIP CODE CH-2544
	SIGNATURE OF INVENTOR 204			DATE	

2 0 5	FULL NAME OF INVENTOR	LAST NAME Pavlov	FIRST NAME Paul	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY Nijmegen	STATE OR FOREIGN COUNTRY Netherlands	COUNTRY OF CITIZENSHIP Netherlands	
	POST OFFICE ADDRESS	STREET Louiseweg 5	CITY Nijmegen	STATE OR COUNTRY Netherlands	ZIP CODE NL-6523
	SIGNATURE OF INVENTOR 205			DATE	
2 0 6	FULL NAME OF INVENTOR	LAST NAME Mathys Jr.	FIRST NAME Robert	MIDDLE NAME	
	RESIDENCE & CITIZENSHIP	CITY Bettlach	STATE OR FOREIGN COUNTRY Switzerland	COUNTRY OF CITIZENSHIP Switzerland	
	POST OFFICE ADDRESS	STREET Chrützliacherstrasse 11	CITY Bettlach	STATE OR COUNTRY Switzerland	ZIP CODE CH-2544
	SIGNATURE OF INVENTOR 201			DATE	